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7 Attorneys for Plaintiff
8 SYMANTEC CORPORATION

9 UNITED STATES DISTRICT COURT FOR THE
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SYMANTEC CORPORATION,

12 Plaintiff,

13 vs.
14

15 GLOBE 2000 CORP., a California
Corporation; NGA PHAN, an individual;
16 and DOES 1-10, inclusive,

17 Defendants.
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Case No. 07 CV 1402 JLS (BLM)
[Complaint filed August 1, 2007]

**MEMORANDUM OF
CONTENTIONS OF FACT AND
LAW**

Pursuant to Local Rule 16.1.f.2

**FINAL PRETRIAL
CONFERENCE:**

Date: December 5, 2008
Time: 10:30 a.m.

Judge Janis L. Sammartino
Courtroom 6 – Third Floor

Pursuant to Civil Local Rule 16.1.f.2, Plaintiff Symantec Corporation (“Symantec”) hereby submits its Memorandum of Contentions of Fact and Law.

I. FACTUAL CONTENTIONS

Symantec has sued the defendants Nga Phan (“Defendant”) and Globe 2000 Corp. for wrongfully purchasing and distributing counterfeit Norton and Symantec software. Globe 2000 Corp. has filed for bankruptcy.

Symantec’s ten claims for relief are for (1) trademark infringement under the Lanham Act, (2) false designation of origin under the Lanham Act, (3) copyright infringement, (4) fraud, (5) trafficking in counterfeit labels, documentation and/or packaging (18 U.S.C. § 2318), (6) statutory unfair competition, (7) common law unfair competition, (8) state law false advertising, (9) intentional interference with prospective economic advantage, and (10) negligent interference with prospective economic advantage.

A. The Central Factual Allegations Are Substantially Similar For Each Of The Ten Claims For Relief.

The central allegations in this lawsuit relate to the unauthorized distribution and sale of counterfeit software by the defendants. Symantec manufactures and distributes software for personal computers, including Norton SystemWorks, Norton Internet Security, Norton AntiVirus, and pcAnywhere. As part of its anti-piracy program, Symantec determined that the Defendant and Globe 2000 Corp. were highly likely to be selling counterfeit Norton and Symantec software. During 2004 and 2005, Symantec acquired fourteen counterfeit CDs from the defendants, via test purchases and via customer submissions of suspected counterfeit products. Symantec sent a cease and desist letter to the defendants in November 2005. Despite receipt of this letter, the Defendants continued to sell Symantec products. Symantec continued to receive counterfeit and unauthorized Symantec CDs from the Defendants during 2006 and 2007.

In all, Symantec now has in evidence approximately fourteen counterfeit

1 and/or unauthorized CDs acquired from the Defendants. The software titles include
2 Norton SystemWorks, Norton Internet Security, Symantec AntiVirus, and Norton
3 AntiVirus. The counterfeit CDs bear the following nine (9) registered trademarks
4 owned by Symantec: Symantec, the Symantec Logo, Norton AntiVirus, LiveUpdate,
5 Norton SystemWorks, Goback, CleanSweep, Norton Ghost and Norton Utilities.
6 The CDs include four (4) copyrighted works.

7 In addition, Symantec has several dozen invoices showing that the
8 Defendants purchased a substantial amount of purported Symantec software from
9 Vertex International, a known distributor of counterfeit products whom Symantec
10 has previously sued and is currently enforcing a judgment of over \$1,000,000 for
11 willful trademark and copyright infringement.

12 Symantec has been in contact with Federal agents (Immigration and Customs
13 Enforcement), who have indicated the defendants in this matter were moving large
14 quantities of counterfeit products.

15 The defendants' liability for trademark and copyright infringement is beyond
16 dispute. The counterfeit and unauthorized CDs obtained from consumers and via
17 test purchases were sold in white envelopes ("sleeves") with counterfeit key code
18 labels affixed to the back of each sleeve, with no retail box, and with no owners'
19 manual. The CDs also have counterfeit codes and labels molded and/or printed on
20 them.

21 Symantec brought this action against the defendants for trademark
22 infringement, copyright infringement, fraud, unfair business practices, false
23 advertising, trafficking in counterfeit labels, documentation and/or packaging, and
24 interference with prospective economic advantage.

25 The primary issue is likely to be the extent of Symantec's damages. The
26 defendants sold counterfeit copies of Symantec software under circumstances that
27 would put any reasonable person on notice that the disks were illegitimate, and did
28 not stop their infringing activities despite Symantec's November 2005 written notice

1 that they were producing and selling counterfeit products.

2 Symantec has received nothing of substance from defendants on purchase and
3 sales information. The corporate defendant filed for bankruptcy the day after the
4 parties submitted a joint motion request that the Court continue the first Mandatory
5 Settlement Conference in this case purportedly to allow the defendants to respond to
6 Symantec's discovery. Ms. Phan's discovery responses were not any better as she
7 merely directed inquiries to the corporation.

8 **B. Symantec's Business, Products and Intellectual Property.**

9 Symantec designs, manufactures, publishes and distributes software for
10 personal computers, including Norton AntiVirus, Norton Internet Security and
11 Norton SystemWorks 2005.

12 Each Norton SystemWorks product consists of a suite of several software
13 programs, including: Norton AntiVirus; Norton Utilities; Norton CleanSweep;
14 GoBack; and Norton Ghost. Norton SystemWorks is also distributed with the
15 "LiveUpdate" feature.

16 Symantec owns the trademarks and copyrights for Norton AntiVirus, Norton
17 Internet Security and Norton SystemWorks.

18 The following nine (9) trademarks are listed on the face of each Norton
19 SystemWorks 2005 CD:

- 20 a. "Symantec", registration number 1683688.
- 21 b. "Norton SystemWorks", registration number 2488092.
- 22 c. "Norton AntiVirus", registration number 1758084.
- 23 d. "Ghost", registration number 1107115.
- 24 e. "Norton Utilities", registration number 1508960.
- 25 f. "CleanSweep", registration number 1936913.
- 26 g. "LiveUpdate", registration number 2243057.
- 27 I. "GoBack", registration number 2271088.
- 28 k. Symantec Logo, registration number 3009890.

1 Norton SystemWorks 2005 includes the following four (4) copyrighted
2 software programs:

- 3 a. Norton AntiVirus, registration number TX 4-908-397.
- 4 b. Norton Ghost, registration number TX 4-715-124.
- 5 c. Norton Utilities, registration number TX 3-772-061.
- 6 d. CleanSweep, registration number TX 4-426-292.

7 The following three (3) trademarks are listed on the face of each Norton
8 Internet Security 2004 and Norton Internet Security 2005 CD:

- 9 a. "Symantec", registration number 1683688.
- 10 b. "LiveUpdate", registration number 2243057.
- 11 c. Symantec Logo, registration number 3009890.

12 Norton Internet Security 2004 and Norton Internet Security 2005 include the
13 following copyrighted software program:

- 14 a. Norton Internet Security, registration number TX 6-501-447.

15 The following four (4) trademarks are listed on the face of each Norton
16 AntiVirus 2004 CD:

- 17 a. "Symantec", registration number 1683688.
- 18 b. "Norton AntiVirus", registration number 1758084.
- 19 c. "LiveUpdate", registration number 2243057.
- 20 d. Symantec Logo, registration number 3009890.

21 Norton AntiVirus 2004 includes the following copyrighted software
22 programs:

- 23 a. Norton AntiVirus, registration number TX 4-908-397.

24 From and after the date of registration of each of its trademarks, Symantec has used
25 the trademarks continuously to identify its products, including NSW and other
26 software. Symantec markets, distributes and sells software under the "Symantec,"
27 "Norton SystemWorks" and other trademarks in California, throughout the United
28 States, and in foreign countries.

1 Symantec does not engage in direct sales of its software or its component
 2 parts to end-user consumers. Instead, the software is sold to authorized distributors
 3 who, in turn, resell the product that eventually ends up in the hands of end-users.
 4 Symantec also does not directly sell its product to customers through the Internet.
 5 Instead, when customers interested in purchasing its products visit the Symantec
 6 website and inquire about purchasing software, they are redirected to a site owned,
 7 operated, and maintained by a third party, namely, Digital River. Symantec licenses
 8 to Digital River the use of its name and the right to sell its software to end-users
 9 over the Internet.

10 Symantec contracts with a third party, DisCopy Labs (“DCL”), for the
 11 manufacture of NSW software within the United States. As a part of this process,
 12 Symantec supplies the digital art work for silkscreen manufacturing, and the
 13 computer program master to DCL, who then ensures that the CDs and associated
 14 components are reproduced according to Symantec's standards. DCL puts the CDs
 15 and associated components along with manuals in packaging designed by Symantec,
 16 and shrink wraps the box. DCL receives product shipping instructions from
 17 Symantec, then palletizes and ships the products to distributors.

18 Any NSW software disk manufactured for sale in the United States by an
 19 entity other than DCL and those entities authorized by DCL is not an authorized
 20 product of Symantec. Symantec does not control or set the resale price of the NSW
 21 software. Symantec sells its software to authorized distributors. Thus, advertised
 22 prices of software below Symantec’s minimum prices to distributors indicate that
 23 the software offered for sale may be counterfeit.

24 **C. Nga Phan is Personally Liable for Infringement of Symantec’s**
 25 **Trademarks and Copyrights.**

26 Defendant Nga Phan’s personal liability is inescapable under *Transgo, Inc. v.*
 27 *Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1021 (9th Cir. 1985) (corporate
 28 officer or director generally liable for all torts he authorizes or directs, or in which

1 he participates, even though acting as agent of corporation and not on his own). Ms.
2 Phan supervised, directed and/or ratified all of the corporate defendant's acts.
3 Symantec alerted the defendants to the likelihood that they were selling counterfeit
4 Norton and Symantec software in November 2005. The defendants ignored that
5 written notice and continued to sell Norton and Symantec products at suspiciously
6 low prices. Ms. Phan, as one of three members of the closely held family business,
7 instigated, authorized, and/or ratified the infringing activities of Globe 2000:

8 Q. Can you tell me what [your job duties] were, please?

9 A. I am responsible for putting stuff up for sale.

10 Q. Any other responsibilities?

11 A. I sometimes answer e-mails.

12 * * * *

13 Q. Okay. So you were solely responsible for listing the products
14 for sale?

15 A. Yes, that's correct.

16 MR. DILLICK: She said she was responsible for listing
17 products. She didn't say she was responsible for listing all products.

18 MR. GONZALEZ: I asked the question and she said "yes." If
19 you want to clarify –

20 THE WITNESS: I'm sorry, it was fast.

21 BY MR. GONZALEZ:

22 Q. Let me ask you this: Was there anyone else at GLOBE 2000 that
23 was responsible for listing product on the website?

24 A. No.

25 Q. You were the only one?

26 A. I don't remember.

27 Nga Phan Depo. at 16:9-16 and 31:21 - 32:11. Moreover, Ms. Phan was personally
28 involved in obvious infringing activity, providing customers with key codes that did
not match their product and trying to change her answer after becoming aware of the
implications of what she had said:

1 Q. You said that when customers wrote e-mails in complaining
2 about – I guess not complaining, but raising issues about the key
3 code, you would try to replace it; is that correct?

4 A. Yes.

5 Q. What do you mean by try to replace it?

6 A. By giving them a new set of key codes from the unused one.

7 Q. You wouldn't actually ship the customers new CDs, you would
8 just give them new key codes?

9 A. Most of the time we required them to send it back, and then se
10 would send them a new one.

11 Q. But other times you wouldn't, you would just give them new key
12 codes?

13 A. No. I think – almost all the time, yeah, that we would need the
14 CD back just to make sure that – what they're complaining or
15 what they're raising issues is true, that there's something wrong
16 with the CD.

17 Phan Depo. at 55:1-19.¹ Ms. Phan testified that she was personally involved in both
18 the selling and advertising of purported Symantec products. Personal liability is
19 mandated against her under *Transgo*.

20 **D. Defendants' Willful Infringement Justifies a Large Statutory**
21 **Damages Award.**

22 Defendants have infringed the following trademarks owned by Symantec:

23 ¹ As one means of limiting the spread of counterfeit products, commencing with its 2004
24 products, Symantec required purchasers to contact Symantec to activate the product shortly after
25 installing it. The activation process requires that the purchaser provide a product key code or the
26 product will have limited functionality. The product activation requirement is designed to prevent
27 unauthorized installation of a given CD on multiple computers. However, in order to allow for
28 legitimate re-installation on the same computer or on a replacement computer, Symantec allows a
given product activation code to be used more than once. Symantec made the business decision to
allow activation codes to be used more than once in part to avoid consumer frustration and increased
costs associated with dealing with problems associated with such legitimate re-installations by
purchasers of genuine Symantec software.

It appears that counterfeiters figured this out, for some product activation codes were being
used numerous times. Symantec determined that such multiple uses of the same activation codes
were caused by consumers registering counterfeit CDs using forgeries of legitimate product activation
codes.

1 Symantec, the Symantec Logo, Norton AntiVirus, LiveUpdate, Norton
 2 SystemWorks, Goback, CleanSweep, Norton Ghost and Norton Utilities. In
 3 addition to the software code on each disc, each disc also includes one or more
 4 manual and/or other instructional materials, each of which is intellectual property
 5 owned by Symantec. Symantec may seek the maximum statutory damages for
 6 infringing those four trademarks and all of the copyrighted material, as well as for
 7 trafficking in counterfeit labels, documentation and/or packaging.

8 **E. Symantec is Entitled to Injunctive Relief.**

9 These defendants trafficked in counterfeit Symantec products but refused to
 10 stop selling those counterfeit products until after Symantec sued them. Ms. Phan
 11 denies receiving Symantec's written notices, despite clear evidence they were
 12 delivered to her, and her acknowledgment that such correspondence would be
 13 delivered to an email account that would be checked by her personally. Ms. Phan
 14 needs to be enjoined or she is very likely to continue infringing Symantec's
 15 trademarks and copyrights.

16 **F. Symantec's Damages.**

17 Defendants have infringed the following trademarks owned by Symantec:
 18 Symantec, the Symantec Logo, Norton AntiVirus, LiveUpdate, Norton
 19 SystemWorks, Goback, CleanSweep, Norton Ghost and Norton Utilities. The
 20 defendants have infringed a like number of Symantec's copyrighted works. In
 21 addition to the software code on each disc, each disc also includes one or more
 22 manual and/or other instructional materials, each of which is intellectual property
 23 owned by Symantec. Symantec may seek the maximum statutory damages for
 24 infringing those four trademarks and all of the copyrighted material, as well as for
 25 trafficking in counterfeit labels, documentation and/or packaging.

26 Actual damages for trafficking in counterfeit labels, documentation and/or
 27 packaging, 18 U.S.C. § 2318, are calculated as the full retail price multiplied by the
 28 number of units sold by the Defendants. Statutory damages under 18 U.S.C. § 2318

range from a minimum of \$2,500 per unit sold up to \$25,000 per unit sold.

II. CLAIMS AND DEFENSES.

A. Symantec's Claims, Elements Required to Establish Symantec's Claims, and Key Evidence in Support of Each Claim.

(1) Plaintiff's Claim Number 1 (Trademark Infringement):

Symantec contends that the Defendant infringed the following trademarks owned by Symantec: Symantec, the Symantec Logo, Norton AntiVirus, LiveUpdate, Norton SystemWorks, Goback, CleanSweep, Norton Ghost and Norton Utilities. Symantec contends that Defendants' infringement was willful.

(A) The Elements Required to Establish Symantec's Claim Number 1:

(i) Non-willful infringement: Symantec owns the trademarks in question. The Defendant distributed the trademarks in question without authorization by Symantec. Consumers were confused and misled as to the true origin of Defendant's allegedly counterfeit products. Symantec suffered damages as a result of the Defendant's actions. *Comedy III Productions, Inc. v. New Line Cinema*, 200 F.3d 593, 594 (9th Cir. 2000).

(ii) Willful infringement: The Defendant knew or, with reasonable inquiry would have known, the products she was selling were counterfeit, not genuine Symantec products. *Tiffany (NJ) Inc. v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003).

(B) In Brief, the Key Evidence Symantec Relies on to Prove Claim Number 1:

Symantec will introduce testimony and documentary evidence that Symantec owns the trademarks in issue and that the Defendant distributed and sold counterfeit CDs. Symantec will introduce testimony and evidence that the Defendant distributed those counterfeit products directly to the public; several consumers

1 submitted counterfeit CDs purchased from the Defendant. The defendant also sold
 2 counterfeit Symantec product directly to Symantec's outside investigators
 3 conducting test purchases. Symantec will also introduce evidence that the
 4 Defendant knew she was violating Symantec's intellectual property rights in the
 5 form of testimony from Nga Phan admitting that she received complaints from her
 6 customers, that she never contacted Symantec, and that she could not tell whether
 7 the CDs were genuine, yet she never contacted Symantec to find out. Symantec will
 8 also introduce evidence and testimony to establish that the Defendant continued
 9 selling Symantec product after she was warned by Symantec that she was selling
 10 counterfeit product.

11 **(2) Plaintiff's Claim Number 2 (False Designation of Origin):**

12 Symantec contends that the Defendants are liable for false designation of
 13 origin under Lanham Act § 43(a), 15 U.S.C. § 1125(a), as to each of the products
 14 protected by the following trademarks owned by Symantec: Symantec, the
 15 Symantec Logo, Norton AntiVirus, LiveUpdate, Norton SystemWorks, Goback,
 16 CleanSweep, Norton Ghost and Norton Utilities

17 **(A) The Elements Required to Establish Symantec's Claim**
 18 **Number 2:**

19 The Defendant's activities in selling and offering for sale software bearing
 20 Symantec's names, logos and trademarks constitute false designation of origin, false
 21 description, and a false representation that the products offered for sale by the
 22 Defendant originates from or is sponsored, approved or authorized by Symantec.
 23 The Defendant's activities in selling and offering for sale software bearing
 24 Symantec's names, logos and trademarks created a likelihood of confusion as to the
 25 source or origin of the products sold and offered for sale. The Defendant's actions
 26 damaged Symantec. MCCARTHY ON TRADEMARKS, § 27:14; *Two Pesos, Inc. v.*
 27 *Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992).
 28

(B) In Brief, the Key Evidence Symantec Relies on to Prove Claim Number 2:

The key evidence is similar to the evidence for claim Number 1. Symantec will introduce testimony and documentary evidence that Symantec owns the trademarks in issue and that the Defendant sold counterfeit CDs. Symantec will introduce testimony and evidence that the Defendant distributed those counterfeit products directly to the public; several consumers submitted counterfeit CDs purchased from the Defendant. The Defendant also sold counterfeit Symantec product directly to Symantec's outside investigators conducting test purchases. Symantec will also introduce evidence that the Defendant knew she was violating Symantec's intellectual property rights in the form of testimony from Nga Phan admitting that she received complaints from her customers, that she never contacted Symantec, and that she could not tell whether the CDs were genuine, yet she never contacted Symantec to find out. Symantec will also introduce evidence and testimony to establish that the Defendant continued selling Symantec products after she was warned by Symantec that she was selling counterfeit product.

(3) Plaintiff's Claim Number 3 (Copyright Infringement):

Symantec contends that the Defendant infringed Symantec's copyrights in Norton SystemWorks, Norton AntiVirus, Norton Internet Security and Ghost. Symantec contends the Defendant's infringement was willful.

(A) The Elements Required to Establish Symantec's Claim Number 3:

(i) Non-willful infringement: Plaintiff owns the rights to Norton SystemWorks, Norton AntiVirus, Norton Internet Security and Ghost. The Defendants distributed and offered for sale unauthorized copies of Symantec's software products. Symantec suffered damages as a result of the Defendant's infringing actions. *Parfums Givenchy, Inc. v. Drug Emporium, Inc.*, 38 F.3d 477, 479 (9th Cir. 1994).

1 (ii) **Willful infringement**: The Defendant's infringement was
 2 willful in that she knew or with reasonable inquiry would have known the software
 3 she sold was counterfeit. Symantec suffered damages as a result of the Defendant's
 4 actions.

5 (B) **In Brief, the Key Evidence Symantec Relies on to Prove**
 6 **Claim Number 3:**

7 The key evidence is similar to the evidence for claim Number 1. Symantec
 8 will introduce testimony and documentary evidence that Symantec owns the
 9 copyrights in issue and that the Defendant sold numerous counterfeit CDs
 10 containing such copyrights. Symantec will introduce testimony and evidence that
 11 the Defendant distributed those counterfeit products directly to the public; several
 12 consumers submitted counterfeit CDs purchased from the Defendant. The
 13 Defendant also sold counterfeit Symantec product directly to Symantec's outside
 14 investigators conducting test purchases. Symantec will also introduce evidence that
 15 the Defendant knew she was violating Symantec's intellectual property rights in the
 16 form of testimony from Nga Phan admitting that she received complaints from her
 17 customers, that she never contacted Symantec, and that she could not tell whether
 18 the CDs were genuine, yet she never contacted Symantec to find out. Symantec will
 19 also introduce evidence and testimony to establish that the Defendant continued
 20 selling Symantec products after she was warned by Symantec that she was selling
 21 counterfeit product.

22 (4) **Symantec's Claim Number 4 (Fraud):**

23 Symantec contends the Defendants fraudulently purchased and sold
 24 counterfeit products bearing the following trademarked and/or copyrighted products:
 25 Norton AntiVirus, LiveUpdate, Norton SystemWorks, Goback, CleanSweep,
 26 Norton Ghost, pcAnywhere, and WinFax PRO. Symantec contends the Defendants
 27 purchased and sold such products, knowing they were counterfeit or with reckless
 28 disregard for whether they were genuine. Symantec contends the Defendants

intended that ultimate users of Defendants' products would use the counterfeit software, register it, activate it using the counterfeit registration codes provided by the Defendants, seek technical assistance from Symantec, and eventually seek to upgrade their counterfeit copies as if they were genuine Symantec products. Symantec reasonably relied on customers' reporting of registration codes as genuine, authorized by Symantec for use by purchasers of genuine Symantec products. In fact, the Defendants' customers never paid anything to Symantec and, through the defendants' fraud, obtained valuable goods, services and other consideration from Symantec, which Symantec would not have provided had it known of the defendants' fraud.

(A) The Elements Required to Establish Symantec's Claim

Number 4:

The essential elements of a claim of fraud by an intentional misrepresentation are:

- 1) The defendant must have made a representation as to a past or existing material fact;
- 2) The representation must have been false;
- 3) The defendant must have known that the representation was false when made or must have made the representation recklessly without knowing whether it was true or false;
- 4) The defendant must have made the representation with an intent to defraud the plaintiff, that is, he or she must have made the representation for the purpose of inducing the plaintiff to rely upon it and to act or to refrain from acting in reliance thereon;
- 5) The plaintiff must have been unaware of the falsity of the representation; must have acted in reliance upon the truth of the representation and must have been justified in relying upon the representation;

- 6) And, finally, as a result of the reliance upon the truth of the representation, the plaintiff must have sustained damage.

CACI Instruction No. 1900.

The essential elements of a claim of fraud by concealment are:

- 1) The defendant must have concealed or suppressed a material fact;
- 2) The defendant must have been under a duty to disclose the fact to the plaintiff;
- 3) The defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff;
- 4) The plaintiff must have been unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact;
- 5) And, finally, the concealment or suppression of the fact caused the plaintiff to sustain damage.

CACI Instruction No. 1901.

(B) In Brief, the Key Evidence Symantec Relies on to Prove Claim Number 4:

The key evidence is similar to the evidence for claim Number 1. Symantec will introduce testimony and documentary evidence that Symantec owns the trademarks in issue and that the Defendant distributed and sold counterfeit CDs. Symantec will introduce testimony and evidence that the Defendant distributed those counterfeit products directly to the public; several consumers submitted counterfeit CDs purchased from the Defendant. The defendant also sold counterfeit Symantec product directly to Symantec's outside investigators conducting test purchases. Symantec will also introduce evidence that the Defendant knew she was violating Symantec's intellectual property rights in the form of testimony from Nga Phan admitting that she received complaints from her customers, that she never

1 contacted Symantec, and that she could not tell whether the CDs were genuine, yet
 2 he never contacted Symantec to find out. Symantec will also introduce evidence
 3 and testimony, to establish that the Defendant continued selling Symantec product
 4 after she was warned by Symantec that she was selling counterfeit product.

5 **(5) Plaintiff's Claim Number 5:**

6 Trafficking in Counterfeit Labels, Documentation And/or Packaging
 7 (18 U.S.C. § 2318).

8 **(A) The Elements Required to Establish Symantec's Claim**
 9 **Number 5:**

10 The Defendant actually sold, transferred or disposed of Symantec products, in
 11 interstate commerce, for purposes of commercial advantage or private financial gain,
 12 or obtained control of or possessed such software with the intent to sell, transfer, or
 13 dispose of it for commercial advantage or private financial gain; and that such
 14 Symantec-branded software had a label affixed to, enclosing, or accompanying, or
 15 designed to be affixed to, enclose, or accompany it, which appeared to be genuine
 16 but was not, or that such Symantec-branded software was accompanied by a
 17 certificate, licensing document, registration card, or similar labeling component that
 18 was not authorized by Symantec. Symantec suffered damages as a result of each of
 19 the Defendant's actions. 18 U.S.C. § 2318.

20 **(B) In Brief, the Key Evidence Symantec Relies on to Prove**
 21 **Claim Number 5:**

22 The key evidence is similar to the evidence for claim Number 1. Symantec
 23 will introduce testimony and documentary evidence that Symantec owns the
 24 products in issue and that the Defendant sold numerous counterfeit CDs containing
 25 such purported products. Symantec will introduce testimony and evidence that the
 26 Defendant distributed those counterfeit products directly to the public; several
 27 consumers submitted counterfeit CDs purchased from the Defendant. The
 28 Defendant also sold counterfeit Symantec product directly to Symantec's outside

investigators conducting test purchases. Symantec will also introduce evidence that the Defendant knew she was violating Symantec's intellectual property rights in the form of testimony from Nga Phan admitting that she received complaints from her customers, that she never contacted Symantec, and that she could not tell whether the CDs were genuine, yet she never contacted Symantec to find out. Symantec will also introduce evidence and testimony to establish that the Defendant continued selling Symantec products after she was warned by Symantec that she was selling counterfeit product.

(6) Plaintiff's Claim Number 6:

Unfair competition under California Business and Professions Code ("B&P") § 17200.

(A) The Elements Required to Establish Symantec's Claim Number 6:

The Defendant engaged in a practice of deceiving consumers as to the nature and origin of the counterfeit Symantec software she purchased, distributed and sold. The Defendant's actions occurred in California or injured California residents. Symantec suffered damages as a result of each of the Defendant's unfair actions. California Business and Professions Code § 17200.

(B) In Brief, the Key Evidence Symantec Relies on to Prove Claim Number 6:

Symantec will introduce testimony and documentary evidence that Symantec owns the trademarks and copyrights in issue and that the Defendant distributed and sold numerous counterfeit CDs recovered from various sources around the United States. Symantec will introduce testimony and documentary evidence that the Defendant admitted that she purchased and sold numerous counterfeit CDs. Symantec will introduce testimony, physical and documentary evidence proving that the CDs the Defendant purchased, marketed, distributed and sold are all counterfeits. Symantec will introduce documents establishing the Defendant

1 purchased, marketed, distributed and sold thousands of counterfeit Symantec CDs.
 2 Each of the counterfeit Symantec CDs purchased and/or sold by the Defendant
 3 includes Symantec's trademarks and copyrighted materials owned by Symantec.
 4 Each of the counterfeit Symantec CDs purchased and/or sold by the Defendant
 5 bears a label affixed to it purporting to be, and appearing to be, a genuine Symantec
 6 label but which in fact is counterfeit. Each of the counterfeit Symantec CDs bears
 7 artwork purporting to identify it as a Symantec product. Symantec will introduce
 8 testimony and documentary evidence that the Defendant distributed and sold the
 9 counterfeit Symantec products in California and that Symantec is headquartered in
 10 California.

11 **(7) Plaintiff's Claim Number 7:**

12 Unfair competition under California common law.

13 **(A) The Elements Required to Establish Symantec's Claim**
 14 **Number 7:**

15 The Defendant pirated Symantec's software and "palmed it off" as if it were
 16 actually produced by or authorized by Symantec, deceiving consumers as to the
 17 nature and origin of the counterfeit software she sold. The Defendant's actions
 18 occurred in California or injured California residents. Symantec suffered damages
 19 as a result of each of the Defendant's unfair actions. *Self-Directed Placement Corp.*
 20 *v. Central Data Corp.*, 908 F.2d 462, 467 (9th Cir. 1990); *Bank of the West v.*
 21 *Superior Court*, 2 Cal. 4th 1254, 1263, 10 Cal. Rptr. 2d 538 (1992); *Lamothe v.*
 22 *Atlantic Recording Corp.*, 847 F.2d 1404, 1406 (9th Cir. 1998).

23 **(B) In Brief, the Key Evidence Symantec Relies on to Prove**
 24 **Claim Number 7:**

25 The key evidence is similar to the evidence for claim Number 5. Symantec
 26 will introduce testimony and documentary evidence that Symantec owns the
 27 trademarks and copyrights in issue and that the Defendant distributed and sold
 28 numerous counterfeit CDs recovered from various sources around the United States.

Symantec will introduce testimony and documentary evidence that the Defendant admitted that she purchased and sold numerous counterfeit CDs. Symantec will introduce testimony, physical and documentary evidence proving that the CDs the Defendant purchased, marketed, distributed and sold are all counterfeits. Symantec will introduce documents establishing the Defendant purchased, marketed, distributed and sold thousands of counterfeit Symantec CDs. Each of the counterfeit Symantec CDs purchased and/or sold by the Defendant includes Symantec's trademarks and copyrighted materials owned by Symantec. Each of the counterfeit Symantec CDs purchased and/or sold by the Defendant bears a label affixed to it purporting to be, and appearing to be, a genuine Symantec label but which in fact is counterfeit. Each of the counterfeit Symantec CDs bears artwork purporting to identify it as a Symantec product. Symantec will introduce testimony and documentary evidence that the Defendant distributed and sold the counterfeit Symantec products in California and that Symantec is headquartered in California.

(8) Plaintiff's Claim Number 8:

State law false advertising – Calif. Bus. & Prof. Code §§ 17500, 17200.

(A) The Elements Required to Establish Symantec's Claim Number 8:

The Defendant pirated Symantec's software and "palmed it off" as if it were actually produced by or authorized by Symantec, deceiving consumers as to the nature and origin of the counterfeit software she sold. The Defendant made false or misleading statements that she knew, or by the exercise of reasonable care, should have known were false or misleading, to consumers in California. Symantec suffered damages as a result of each of the Defendant's unfair actions. *Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 197 Cal. Rptr. 783 (1983).

To state a cause of action under these statutes, it is necessary only to show that members of the public are likely to be deceived. Actual deception or confusion

caused by misleading statements is not required. *Day v. AT&T Corp.*, 63 Cal. App. 4th 325, 332, 74 Cal. Rptr. 2d 55 (1998).

(B) In Brief, the Key Evidence Symantec Relies on to Prove Claim Number 8:

The key evidence is similar to the evidence for claim Number 6. Symantec will introduce testimony and documentary evidence that Symantec owns the trademarks and copyrights in issue and that the Defendant distributed and sold numerous counterfeit CDs recovered from various sources around the United States. Symantec will introduce testimony and documentary evidence that the Defendant admitted that she purchased and sold numerous counterfeit CDs. Symantec will introduce testimony, physical and documentary evidence proving that the CDs the Defendant purchased, marketed, distributed and sold are all counterfeits. Symantec will introduce documents establishing the Defendant purchased, marketed, distributed and sold thousands of counterfeit Symantec CDs. Each of the counterfeit Symantec CDs purchased and/or sold by the Defendant includes Symantec's trademarks and copyrighted materials owned by Symantec. Each of the counterfeit Symantec CDs purchased and/or sold by the Defendant bears a label affixed to it purporting to be, and appearing to be, a genuine Symantec label but which in fact is counterfeit. Each of the counterfeit Symantec CDs bears artwork purporting to identify it as a Symantec product. Symantec will introduce testimony and documentary evidence that the Defendant distributed and sold the counterfeit Symantec products in California and that Symantec is headquartered in California.

(9) Plaintiff's Claim Number 9:

Intentional interference with Plaintiff's prospective economic advantage.

(A) The Elements Required to Establish Symantec's Claim Number 9:

The elements of interference with prospective advantages are: (1) the existence of a prospective business relationship; (2) defendant's knowledge of the

1 existence of the relationship; (3) defendant's intentional conduct designed to disrupt
 2 the relationship; (4) actual causation of damages; and (5) proximate causation of
 3 damages. *Institute of Veterinary Pathology v. California Health Laboratories, Inc.*,
 4 116 Cal. App. 3d 111 (1981); *Shamblin v. Berge*, 166 Cal. App. 3d 118, 122-123
 5 (1985); *Buckaloo v. Johnson*, 14 Cal. 3d 815, 827 (1975); *Blank v. Kirwan*, 39 Cal.
 6 3d 311(1985).

7 **(B) In Brief, the Key Evidence Symantec Relies on to Prove**
 8 **Claim Number 9:**

9 The key evidence is similar to the evidence for claim Number 7. Symantec
 10 will introduce testimony and documentary evidence that Symantec owns the
 11 trademarks and copyrights in issue and that the Defendant distributed and sold
 12 numerous counterfeit CDs recovered from various sources around the United States.
 13 Symantec will introduce testimony and documentary evidence that Defendant
 14 admitted that she purchased and sold numerous counterfeit CDs. Symantec will
 15 introduce testimony, physical and documentary evidence proving that the CDs the
 16 Defendant purchased, marketed, distributed and sold are all counterfeits. Symantec
 17 will introduce documents establishing the Defendant purchased, marketed,
 18 distributed and sold thousands of counterfeit Symantec CDs. Each of the
 19 counterfeit Symantec CDs purchased and/or sold by the Defendant includes
 20 Symantec's trademarks and copyrighted materials owned by Symantec. Each of the
 21 counterfeit Symantec CDs purchased and/or sold by the Defendant bears a label
 22 affixed to it purporting to be, and appearing to be, a genuine Symantec label but
 23 which in fact is counterfeit. Each of the counterfeit Symantec CDs bears artwork
 24 purporting to identify it as a Symantec product. Symantec will introduce testimony
 25 and documentary evidence that the Defendant distributed and sold the counterfeit
 26 Symantec products in California and that Symantec is headquartered in California.
 27 Symantec will introduce testimony, physical and documentary evidence that
 28 Symantec has been in the business of producing and distributing Norton and

Symantec products for many years, that it has an existing customer base, and that the Defendant induced consumers to purchase counterfeit CDs from the Defendant instead of genuine CDs produced by, or authorized to be produced by, Symantec. Symantec will introduce testimony and documentary evidence that the Defendant participated in a scheme to mislead consumers into believing the counterfeit products distributed and sold by the Defendant were genuine Symantec products.

(10) Plaintiff's Claim Number 10:

Negligent interference with Plaintiff's prospective economic advantage.

(A) The Elements Required to Establish Symantec's Claim Number 10:

To establish this claim, Symantec must prove:

- 6) That Symantec and a third party were in an economic relationship that probably would have resulted in a future economic benefit to Symantec;
- 7) That defendants knew or should have known of this relationship;
- 8) That defendants knew or should have known that this relationship would be disrupted if they failed to act with reasonable care;
- 9) That defendants failed to act with reasonable care;
- 10) That defendants engaged in wrongful conduct;
- 11) That the relationship was disrupted;
- 12) That Symantec was harmed; and
- 13) That defendants' wrongful conduct was a substantial factor in causing Symantec's harm.

CACI No. 2204. *Venhaus v. Shulty*, 155 Cal. App. 4th 1072, 1078 (2007).

(B) In Brief, the Key Evidence Symantec Relies on to Prove Claim Number 10:

The key evidence is similar to the evidence for claim Number 8. Symantec will introduce testimony and documentary evidence that Symantec owns the

1 trademarks and copyrights in issue and that the Defendant distributed and sold
2 numerous counterfeit CDs recovered from various sources around the United States.
3 Symantec will introduce testimony and documentary evidence that Defendant
4 admitted that she purchased and sold numerous counterfeit CDs. Symantec will
5 introduce testimony, physical and documentary evidence proving that the CDs the
6 Defendant purchased, marketed, distributed and sold are all counterfeits. Symantec
7 will introduce documents establishing the Defendant purchased, marketed,
8 distributed and sold thousands of counterfeit Symantec CDs. Each of the
9 counterfeit Symantec CDs purchased and/or sold by the Defendant includes
10 Symantec's trademarks and copyrighted materials owned by Symantec. Each of the
11 counterfeit Symantec CDs purchased and/or sold by the Defendant bears a label
12 affixed to it purporting to be, and appearing to be, a genuine Symantec label but
13 which in fact is counterfeit. Each of the counterfeit Symantec CDs bears artwork
14 purporting to identify it as a Symantec product. Symantec will introduce testimony
15 and documentary evidence that the Defendant distributed and sold the counterfeit
16 Symantec products in California and that Symantec is headquartered in California.
17 Symantec will introduce testimony, physical and documentary evidence that
18 Symantec has been in the business of producing and distributing Norton and
19 Symantec products for many years, that it has an existing customer base, and that
20 the Defendant induced consumers to purchase counterfeit CDs from the Defendant
21 instead of genuine CDs produced by, or authorized to be produced by, Symantec.
22 Symantec will introduce testimony and documentary evidence that the Defendant
23 participated in a scheme to mislead consumers into believing the counterfeit
24 products distributed and sold by the Defendant were genuine Symantec products.

25 **B. Defendant's Defenses**

26 Defendant has not clearly indicated which of her defenses she considers to be
27 viable and intends to pursue.

28 **C. Key Evidentiary Issues.**

1 The most important evidentiary issue is whether defendant Nga Phan is
2 personally liable for willful infringement.

3 Another evidentiary issue is likely to be damages. Symantec will likely seek
4 the maximum statutory damages under the Lanham Act, the Copyright Act and the
5 Trafficking in Counterfeit Labels Act (18 U.S.C. § 2318). Ms. Phan testified that
6 she was personally involved in both the selling and advertising of purported
7 Symantec products. Personal liability is mandated against her under *Transgo*.

8 Symantec is likely to elect statutory damages. The Defendant infringed the
9 following trademarks owned by Symantec: Symantec, the Symantec Logo, Norton
10 AntiVirus, LiveUpdate, Norton SystemWorks, Goback, CleanSweep, Norton Ghost
11 and Norton Utilities. Symantec is entitled to statutory damages under 15 USCS
12 § 1117(c) (trademark infringement) and 17 USCS § 504(c) (copyright), if Symantec
13 elects the statutory damages remedies under federal copyright and/or trademark law.
14 Maximum statutory damages under 15 U.S.C. § 1117(c) would be as high as \$4
15 million; maximum damages under the Copyright act would be as high as \$150,000
16 per title, which in this case could total \$600,000.

17 **D. Key Issues of Law.**

18 The legal issues to some extent parallel the evidentiary issues discussed
19 above. In addition, legal issues concerning the Defendant's willfulness and the
20 appropriate measures of damages will need to be addressed.

21 Symantec's core claims are that both Nga Phan and her corporation, Globe
22 2000 Corp., willfully infringed Symantec's copyrights and trademarks. "Willful"
23 has been interpreted to mean "with knowledge that the defendant's conduct
24 constitutes copyright infringement." *Peer International Corp. v. Pausa Records,*
25 *Inc.*, 909 F.2d 1332, 1336 n.3 (9th Cir. 1990), quoting 3 M. Nimmer & D. Nimmer,
26 NIMMER ON COPYRIGHT § 14.04[B], at 14-40.2-.3 (1989). "To refute evidence of
27 willful infringement, [a defendant] must not only establish its good faith belief in the
28 innocence of its conduct, it must also show that it was reasonable in holding such a

1 belief.” *Peer International Corp. v. Pausa Records, Inc.*, *supra*, 909 F.2d 1332,
 2 1336. The defendants’ knowledge and intent, together with the volume of
 3 counterfeit CDs they sold, are sufficient to establish willfulness. *See Philip Morris*
 4 *U.S.A. Inc. v. Castworld Productions, Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003).

5 The Defendant here seems to be claiming that she did not know she was
 6 selling counterfeit products, so she is not liable for willful infringement. In addition
 7 to the evidence that she clearly knew she was selling counterfeit products, there is
 8 strong evidence she was at least “willfully blind” to the fact that she was dealing in
 9 counterfeits. *See, e.g., Microsoft Corp. v. Compusource Distribs., Inc.*, 115 F.
 10 Supp. 2d 800, 809 (E.D. Mich. 2000), in which the court noted that the defendants
 11 received a cease and desist letter, but did nothing but telephone their two primary
 12 software vendors, and continued to use those two vendors “without making any
 13 attempt to investigate their assurances that they were distributing genuine Microsoft
 14 software and hardware.” *Id.* Here, too, the Defendant received a cease and desist
 15 letter and continued to sell counterfeit products until Symantec sued.

16 Nga Phan’s personal liability is inescapable under *Transgo, Inc. v. Ajac*
 17 *Transmission Parts Corp.*, 768 F.2d 1001, 1021 (9th Cir. 1985) (corporate officer
 18 or director generally liable for all torts he authorizes or directs, or in which he
 19 participates, even though acting as agent of corporation and not on his own). Ms.
 20 Phan authorized, directed and/or ratified all of the acts for which the corporate
 21 defendant is liable.

22 The principal legal issues involving damages also parallel the evidentiary
 23 issues discussed above. Symantec will probably elect statutory damages under the
 24 Lanham Act, the Copyright Act, and the anti-trafficking statute, 18 U.S.C. § 2318.
 25 Symantec may recover the maximum statutory damages for **both** trademark
 26 infringement **and** copyright infringement so long as the Defendant’s actions violated
 27 both federal acts. *Nintendo of America v. Dragon Pacific International*, 43 F.3d
 28 1007, 1011 (9th Cir. 1994) (“However, it is clear enough that, when a defendant

violates both the Copyright Act and the Lanham Act, an award of both types of damages is appropriate”). Similar analysis allows Symantec to recover statutory damages under 23 U.S.C. § 2318 in addition to the maximum statutory damages under the Lanham Act and the Copyright Act.

E. Bifurcation of Issues.

Symantec does not request bifurcation.

F. Jury Trial.

Symantec requested a jury trial in its complaint. Symantec is entitled to a jury trial on each of its core claims.

G. Attorneys’ Fees.

Symantec is entitled to recover attorneys’ fees under its Lanham Act claims. *See* 15 U.S.C. § 1117(b) (“the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney’s fee. . .”).

H. Abandonment of Issues.

Symantec is considering dropping its tortious interference claims in order to streamline the trial.

III. EXHIBITS

Pursuant to Local Rule 16.1f(2)(c), Plaintiff Symantec Corporation hereby sets for its list of exhibits:

<u>Symantec v. Nga Phan, et al.</u>		<u>07 CV 1402 JLS (BLM)</u>	
<u>EXH. NO.:</u>	<u>DESCRIPTION</u>	<u>DATE MARKED</u>	<u>DATE ADMITTED</u>
1.	November 2005 C&D Letter from Symantec to Defendants		
2.	Norton AntiVirus discs labeled A2004-07-00029 (2 Discs)		
3.	Documents from Richard Smith re discs labeled A2004-07-00029 (2 Discs)		
4.	Photomicrographs of Norton AntiVirus discs labeled A2004-07-00029 (2 Discs)		

<u>Symantec v. Nga Phan, et al.</u>		<u>07 CV 1402 JLS (BLM)</u>	
<u>EXH. NO.:</u>	<u>DESCRIPTION</u>	<u>DATE MARKED</u>	<u>DATE ADMITTED</u>
5.	Norton AntiVirus discs labeled A2004-07-00030		
6.	Documents from Richard Smith re discs labeled A2004-07-00030		
7.	Photomicrographs of Norton AntiVirus discs labeled A2004-07-00030		
8.	Norton AntiVirus discs labeled A2004-08-00015 (2 Discs)		
9.	Documents from Brad Wagner re Norton AntiVirus discs labeled A2004-08-00015 (2 Discs)		
10.	Photomicrographs of Norton AntiVirus 2004 discs labeled A2004-08-00015 (2 Discs)		
11.	Norton AntiVirus disc labeled A2004-09-00058		
12.	Documents from Don King re Norton AntiVirus disc labeled A2004-09-00058		
13.	Photomicrographs of Norton AntiVirus disc labeled A2004-09-00058		
14.	Norton Internet Security disc labeled A2004-10-00089		
15.	Documents from Bruce Barkley re Norton Internet Security disc labeled A2004-10-00089		
16.	Photomicrographs of Norton Internet Security disc labeled A2004-10-00089		
17.	Norton Internet Security discs labeled A2005-05-00025 (2 Discs)		
18.	Documents from Jodie Pavey re Norton Internet Security discs labeled A2005-05-00025 (2 Discs)		
19.	Photomicrographs of Norton Internet Security discs labeled A2005-05-00025 (2 Discs)		
20.	Norton Internet Security disc labeled A2006-03-00023 (1 Disc)		

Symantec v. Nga Phan, et al.		07 CV 1402 JLS (BLM)	
<u>EXH. NO.:</u>	<u>DESCRIPTION</u>	<u>DATE MARKED</u>	<u>DATE ADMITTED</u>
21.	Documents from David Harris re Norton Internet Security disc labeled A2006-03-00023 (1 Disc)		
22.	Photomicrographs of Norton Internet Security disc labeled A2006-03-00023 (1 Disc)		
23.	Norton Internet Security discs labeled A2006-03-00063 (3 Discs)		
24.	Documents from Douglas A. Williams re Norton Internet Security discs labeled A2006-03-00063 (3 Discs)		
25.	Photomicrographs of Norton Internet Security discs labeled A2006-03-00063 (3 Discs)		
26.	Norton SystemWorks discs labeled A2006-04-00072 (1 disc)		
27.	Documents from William Wilson re Norton SystemWorks discs labeled A2006-04-00072 (1 disc)		
28.	Photomicrographs of Norton SystemWorks discs labeled A2006-04-00072 (1 disc)		
29.	Genuine Exemplar of Norton Internet Security		
30.	Photomicrographs of Genuine Exemplar of Norton Internet Security		
31.	Genuine Exemplar of Norton AntiVirus		
32.	Photomicrographs of Genuine Exemplar of Norton AntiVirus		
33.	Genuine Exemplar of Norton SystemWorks		
34.	Photomicrographs of Genuine Exemplar of Norton SystemWorks		
35.	Robert Freedman Expert Report		
36.	IRMA Anti-Piracy Compliance Program, Standards & Procedures, Version 4.2 (2004)		
37.	IFPI's SID Code Implementation Guide		
38.	W. Scott Mowrey Jr., Expert Report		

<u>EXH. NO.:</u>	<u>DESCRIPTION</u>	<u>DATE MARKED</u>	<u>DATE ADMITTED</u>
39.	Symantec trademark certificates for: a. "Symantec", registration number 1683688. b. "Norton SystemWorks", registration number 2488092. c. "Norton AntiVirus", registration number 1758084. d. "Ghost", registration number 1107115. e. "Norton Utilities", registration number 1508960. f. "CleanSweep", registration number 1936913. g. "LiveUpdate", registration number 2243057. h. "pcAnywhere", registration number 1781148 I. "GoBack", registration number 2271088 j. "WinFax", registration 3182978 k. Symantec Logo, registration number 3009890		
40.	Symantec copyright registrations for: a. Norton AntiVirus b. Norton Internet Security c. Norton Utilities d. Norton Ghost e. CleanSweep f. pcAnywhere		
41.	Pages from Defendants' Website and Price List		
42.	Deposition of Nga Phan		

<u>Symantec v. Nga Phan, et al.</u>		<u>07 CV 1402 JLS (BLM)</u>	
<u>EXH. NO.:</u>	<u>DESCRIPTION</u>	<u>DATE MARKED</u>	<u>DATE ADMITTED</u>
43.	Symantec Corporation's 2007 10-K		
44.	Defendant Nga Phan's Responses to Special Interrogatories		
45.	Defendant Globe 2000 Corp.'s Responses to Special Interrogatories		
46.	Defendant Nga Phan's Responses to Document Requests		
47.	Defendant Globe 2000 Corp.'s Responses to Document Requests		
48.	Symantec's Complaint		
49.	Defendants' Answer to Symantec's Complaint		
50.	Nga Phan Deposition Transcript		
51.	Defendant's Sales Invoices		
52.	Defendant's Purchase Invoices		
53.	Intentionally Left Blank		
54.	Intentionally Left Blank		
55.	Intentionally Left Blank		

IV. WITNESSES

Pursuant to Rule 26(a)(3) of the Federal Rules of Civil Procedure and Local Rule 16.1f(2)(d), Plaintiff Symantec Corporation disclose the following witnesses whom it intends to call in its case in chief, excluding witnesses offered for rebuttal or impeachment. Some of the witnesses so designated were employed by Symantec but are no longer employees, and as such Symantec cannot compel their attendance at trial.

1. **David Majors**, Symantec Corporation, 20330 Stevens Creek Boulevard, Cupertino, CA 95014. Telephone: 408-517-8000.

2. **Camilla Herron**, Symantec Corporation, 20330 Stevens Creek Boulevard, Cupertino, CA 95014. Telephone: 408-517-8000.

1 3. **Jerry Jones**, of Symantec Corporation, 20330 Stevens Creek
2 Boulevard, Cupertino, CA 95014. Telephone: 408-517-8000.

3 4. **Marc Brandon**, of Symantec Corporation, 20330 Stevens Creek
4 Boulevard, Cupertino, CA 95014. Telephone: 408-517-8000.

5 5. **Chris Blackletter**, formerly of Symantec Corporation.

6 6. **Chansonette Connolly**, formerly of Symantec Corporation.

7 7. **Jodie Pavey**, Sami Investigations, Inc., Oregon City, Oregon. Ms.
8 Pavey may testify at trial if the need arises. Ms. Pavey will be able to testify
9 concerning a test purchases she conducted from the defendants.

10 8. **Robert Freedman. Expert Witness.** 1140 Lindblade Street, Culver
11 City, CA 90230. (310) 838-4052. Mr. Freedman is expected to testify at trial.
12 Mr. Freedman is expected to testify as to the CD manufacturing process,
13 methodology for determining whether a CD is genuine or counterfeit and expert
14 opinion testimony as to the counterfeit nature of the disks obtained from the
15 defendants. Mr. Freedman has over 25 years of experience in the manufacturing
16 and distribution of computer content on floppy disks, computer tapes, CDs and
17 DVDs. Mr. Freedman has worked extensively with the Recording Industry
18 Association of America (“RIAA”) on anti-piracy matters as they relate to CD-Audio
19 and has trained numerous investigators for the RIAA, Motion Picture Association of
20 America, Los Angeles Sheriff’s Department, and Los Angeles Police Department in
21 the manufacturing processes utilized in the manufacturing of CDs and DVDs, and in
22 the identification of counterfeit product.

23 9. **William Scott Mowrey, Jr. Expert Witness.** 15303 Ventura
24 Boulevard
25 Suite 1150, Sherman Oaks, CA 91403. (818) 986-5070. Mr. Mowrey is expected
26 to testify at trial. He will testify as to issues of damages. Mr. Mowrey is a Certified
27 Public Accountant, licensed in the state of California, and a founding partner of the
28 firm of Cohen, Miskei & Mowrey LLP, which specializes in forensic accounting,

litigation consulting and business valuation services.

10. **Eric Munson**, Baute & Tidus, LLP, 777 S. Figueroa St., Los Angeles, CA 90017. (213) 630-5000.

11. **Nga Phan**, Defendant.

12. **Thai Tran**, 3955 Golf Drive, San Jose, California 95127.

13. **Tim Tran**, 3954 Golf Drive, San Jose, California 95127.

14. **Richard Smith**, 537 W. 14th St., Traverse City, MI 49684. (231) 933-9910.

15. **Brad Wagner**, 569 North Main Street, Kalispell, MT 59901. (406) 257-0798.

16. **Don King**, 2933 Alcoa Hwy., Knoxville, TN 37920. (865) 579-1354.

17. **Bruce Barkley**, 705 W. Windsor, Phoenix, AZ.

18. **Douglas Williams**. 889-C Woodville Road, Apt. 27, Mansfield, OH 44907. (419) 525-2433.

19. **David Harris**, 1000 Pittsford Victor Road, Pittsford, NY 14534. (585) 387-8793.

///

20. **William D. Wilson**, 1315 Oak Hill Drive, Colorado Springs, CO 80919. (719) 260-1324.

Dated: November 10, 2008

BAUTE & TIDUS LLP

By: s / Henry H. Gonzalez
Mark D. Baute
Henry H. Gonzalez
Attorneys for Plaintiff
SYMANTEC CORPORATION

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action; my business address is

✓ — BAUTE & TIDUS, LLP
777 South Figueroa Street, Suite 4900
Los Angeles, CA 90017
Tel: (213) 630-5000

— ACE MESSENGER AND ATTORNEY SERVICE, INC.
811 Wilshire Boulevard, Suite 900
Los Angeles, CA 90017
Tel: (213) 623-3979

I served the following listed documents on the interested parties in this action as follows:

SYMANTEC v. GLOBE 2000 CORPORATION, et al.
Case No. 07 CV 1402 JLS (BLM)
[1740.39]

MEMORANDUM OF CONTENTIONS OF FACT AND LAW

— By Personal Service I caused such envelope to be delivered by hand to the interested party as listed below.

— By Facsimile to the names and fax numbers listed below.

— By Federal Express ~ Next Business Day Delivery: by placing a true copy thereof in a sealed envelope(s) and addressed to the parties listed below.

— By Mail: by placing a true copy thereof in a sealed envelope and addressed to the parties listed below. I placed such envelope(s) for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid.

I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

✓ — Filed and served electronically in accordance with the Court’s electronic filing (“ECF”) rules, pursuant to which registered ECF users receive service copies by e-mail delivery. A courtesy copy will follow by U.S. Mail.

By E-Mail: I caused the above-referenced document(s) to be e-mailed to the parties listed below, as noted.

Steven A. Dillick, Esq.
LAW OFFICES OF STEVEN DILLICK
1910 Market Street, Suite 1910
San Francisco, CA 94105
Tel: (415) 399-8777
Fax: (415) 399-8778

*Attorneys for Defendants
GLOBE 2000 CORP., and
NGA PHAN*

[Rev. November 4, 2008]

☐ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (FEDERAL) I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made, and I certify under penalty of perjury that the foregoing is true and correct.

☐ (FEDERAL - ATTORNEY) I hereby certify that I am a member of the Bar of the United States District Court, **Central District** of California, and I certify under penalty of perjury that the foregoing is true and correct.

Executed on November 10, 2008 at Los Angeles, California.

KIRSTEN DeVERE
print name

s/ Kirsten DeVere
signature